



GEORGE E. MINGLEDORFF III
Commissioner (Acting)

State of Alabama
Department of Revenue

Montgomery, Alabama 36132

March 25, 1994

GEORGE E. MINGLEDORFF III
Assistant Commissioner
LEWIS A. EASTERLY
Secretary

Ms. Mary Lou Benzel, Contracting Officer
General Services Administration
Federal Supply Service
Washington, DC 20406

Dear Ms. Benzel:

This is in response to your letter dated March 18, 1994, regarding your new contract with Rocky Mountain BankCard System (RMBCS) effective March 4, 1994, for the VISA I.M.P.A.C. cards.

Federal Government purchases made with the new I.M.P.A.C. cards will continue to be recognized by Alabama as exempt Government purchases when payments are made directly by the Federal Government to the vendor.

Alabama Sales and Use Tax Rule G27-322 (810-6-3-.72.02) United States, Sales to is enclosed for your reference.

Please do not hesitate to let me know if you have any further questions.

Sincerely,

Horace L. Hitt, Chief
Sales and Use Tax Division

HLH:jh/3081

Enclosure

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MAR 29 PM 2:50

ATTACHMENT 7

7-1

ALABAMA

ALABAMA -- DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

G27-322
G27-331
G27-411

G27-322 (810-6-3-.72.02)
United States, Sales to

Where construction materials or other tangible personal property is ordered by, sold directly to, and paid for by the Federal Government, its departments, or its agencies, such sales are not subject to the Alabama sales tax. In such case, the determining factors are whether or not the property is ordered and paid for by and delivered to the Federal Government, its departments, or its agencies. (Also see Rule C15-013, (810-6-1-.45), Contractors) (Readopted through APA Code effective October 1, 1982) (Section 40-23-4(17))

G27-331 (810-6-3-.13)
Defense Plant Corporation

(1) The Defense Plant Corporation is an instrumentality of the United States. Sales to this corporation or its agents acting for it are not subject to the sales tax.

(2) The purchase order of the agents of this corporation, when making purchases for the use and benefit of the corporation, must plainly state that the purchases are being made by the agent "acting for and on behalf of the corporation." (Readopted through APA Code effective October 1, 1982) (Section 40-23-4(17))

G27-411 (810-6-3-.03)
American National Red Cross

The American National Red Cross is an agency of the United States; its purchases are exempt from the sales and use tax. (Readopted through APA Code effective October 1, 1982) (Section 40-23-4(17))

ALABAMA - DEPARTMENT OF REVENUE - SALES AND USE TAX RULES
Code of Alabama 1975, Sections 40-23-31 and 40-23-83

G27-421
G27-422
G27-431

G27-421 (810-6-3-.16)
Federal and State Chartered Credit Unions

The sale to, or use by, a federal or state chartered credit union of tangible personal property in this state is not subject to sales or use taxes. (Adopted March 9, 1961, amended July 27, 1964, readopted through APA Code effective October 1, 1982) (Section 40-23-4(17))

G27-422 (810-6-3-.12.02)
Credit Unions, Federal and State Chartered, Sales by

(1) Sales of tangible personal property by a federally chartered credit union are exempt from sales tax. A federally chartered credit union is an instrumentality of the federal government and, therefore, exempt from tax.

(2) Sales of tangible personal property by a state chartered credit union are subject to the sales tax. (Adopted June 12, 1978, readopted through APA Code effective October 1, 1982)

G27-431 (810-6-3-.42)
National Farm Loan Associations

National farm loan associations are instrumentalities of the United States and are not subject to sales or use taxes on the property purchased by them for use in carrying on any activity they are authorized to engage in by federal law. (Authority: 12 U.S.C.A 931) (Readopted through APA Code effective October 1, 1982) (Section 40-23-4(17))

STATE OF ALASKA

DEPARTMENT OF REVENUE

DM 3/30/94 Pamy 3/29
WALTER J. HICKEL, GOVERNOR

RECEIVED

1994 MAR 20 5:10 PM
INCOME AND EXCISE AUDIT
P. O. BOX 110420
JUNEAU, AK 99811-0420
FAX: (907) 465-2375

March 24, 1994

Mary Lou Benzel
Contracting Officer
General Services Administration
Federal Supply Service
Washington, DC 20406

Dear Ms. Benzel:

I am responding to your March 18 letter to Steve Kettel regarding use of the Federal government's VISA card in Alaska in terms of making tax exempt purchases.

Please note that Alaska does not have a state sales tax. Accordingly, the issue of the State of Alaska honoring the card for tax exemption purposes does not apply.

Please change your records to reflect our new director and address as follows:

Larry E. Meyers, Director
Alaska Department of Revenue
Income and Excise Audit Division
P.O. Box 110420
Juneau, AK 99811-0420

If you have any further questions, please feel free to contact me at (907) 465-3691.

Sincerely,



Paul E. Dick
Operations Manager

ARIZONA DEPARTMENT OF REVENUE

1600 WEST MONROE - PHOENIX, ARIZONA 85007-2650

RECEIVED

1994 APR 20 AM 9:14

FIFE SYMINGTON
GOVERNOR



HAROLD SCOTT
DIRECTOR

April 15, 1994

Mary Lou Benzel
General Services Administration
Federal Supply Service
Washington, DC 20406

Dear Ms. Benzel:

This is in response to your letter dated March 18, 1994 concerning the use of a credit card by federal employees to purchase small dollar items. Regardless of whether or not the card is used, the fact that the federal government is the purchaser does *not* necessarily mean that purchases are tax exempt.

For your general information, Arizona's transaction privilege (sales) tax is a tax imposed on the privilege of conducting business in the state of Arizona. This tax is levied on the seller, not the purchaser. The seller may pass the burden of the tax on to the purchaser, but the seller is ultimately liable to Arizona for the tax.

Arizona Administrative Code (A.A.C.) R15-5-2002 clarifies this distinction:

The transaction privilege tax is imposed directly on the person engaging in a taxable business within Arizona. The vendor shall be liable for the tax, regardless of whether or not the vendor passes on the economic burden of the tax to the customer.

An Arizona court decision established that the imposition of the transaction privilege tax upon sales made by a vendor to the federal government or its departments or agencies does not violate any federal immunity from state taxation, even when the burden of the tax is passed on to the federal governmental entity. *Arizona State Tax Commission v. Garrett Corp.*, 79 Ariz. 389, 291 P.2d 208 (1955) held that a vendor engaged in the business of selling tangible personal property "is the one upon whom the legal incidence of the tax falls, the state is not collecting a tax from the United States Government and the latter is not paying a tax to the state, and therefore the government's implied immunity from state taxation is not violated."

A decision of the Comptroller General of the United States dated September 7, 1990, reiterates the fact that the federal government is not immune from an Arizona tax which is levied upon the vendor and not the purchaser. This decision is enclosed for your reference.

OTHER LOCATIONS: Tucson Government Mall - 402 W. CONGRESS - TUCSON

East Valley - 1440/1460 E. SOUTHERN - TEMPE

Arizona Revised Statutes (A.R.S.) § 42-1310.01 imposes the transaction privilege tax on the business of selling tangible personal property at retail. A.R.S. § 42-1310.01.P.3 defines "selling at retail" as a sale for any purpose other than for resale in the regular course of business. All sales of tangible personal property are subject to tax unless specifically exempted by statute.

There are three deductions from the tax base under the retail classification which are relevant to sales made to federal entities. A.R.S. § 42-1310.01.K provides that:

The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.

2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

(A.R.S. § 42-1310.01.Q, which defines manufacturer, modifier, assembler and repairer, is enclosed for your reference.)

A.R.S. § 42-1310.01.L provides a separate exemption for other types of sales to federal entities, (and refers back to the above statutory subsection):

There shall be deducted from the tax base fifty percent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies, which is not deducted under subsection K of this section.

If the federal government also leases items, there is another exemption of which you should be aware. A.R.S. § 42-1310.11 imposes the transaction privilege tax on the business of renting or leasing tangible personal property for a consideration. An exemption is provided for leases or rentals of tangible personal property which, if it had been purchased instead of leased or rented by the lessee, would have been exempt under section 42-1310.01, subsection K, paragraph 1. As stated above, this section provides an exemption for sales made directly to the United States Government or its departments or agencies *by a manufacturer, modifier, assembler or repairer*.

Other than the above exemptions for sales and leases of tangible personal property under the retail and personal property rental classifications, there are no other exemptions for sales to federal entities in the transaction privilege tax statutes. Thus, businesses operating under classifications such as transient lodging and restaurant are subject to the full rate of transaction privilege tax for their sales made to the federal government, its agencies or departments.

Mary Lou Benzel
General Services Administration
April 15, 1994
Page 3

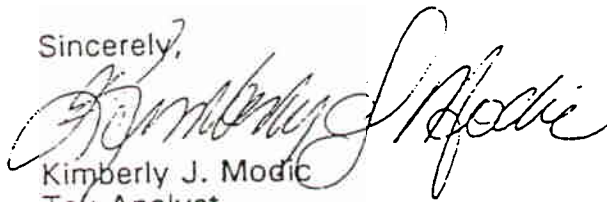
If a vendor does not have nexus for transaction privilege tax purposes, Arizona's use tax may apply. Arizona Revised Statutes (A.R.S.) § 42-1408 imposes Arizona's use tax upon the storage, use or consumption in this state of tangible personal property. A.R.S. § 42-1411 imposes upon retailers the duty to collect the tax from Arizona purchasers. A.R.S. § 42-1407 requires retailers selling to Arizona purchasers to register with the Department of Revenue for collection of the use tax.

A.R.S. § 42-1409.A.3 provides an exemption from the use tax for the storage, use or consumption of tangible personal property which the constitution or laws of the United States prohibit this state from taxing. A.A.C. R15-5-2360 provides that purchases made by the federal government are not taxable.

This is an information letter and not a private taxpayer ruling. The advice it contains is solely dependent upon the adequacy and accuracy of the information provided. Therefore, inadequate and/or inaccurate taxpayer information could result in the imposition of additional tax, interest and penalties. Conversely, if the taxpayer information is correct but the department later determines that this advice is erroneous, any penalties directly attributable to following this advice will be abated.

If you need further assistance, please contact this office again.

Sincerely,



Kimberly J. Modic
Tax Analyst
Tax Research and Analysis Section

Enclosures: A.R.S. § 42-1310.01
U.S. Comptroller General's opinion

Ref: A.1.t

F:\GSA

Cross References

Environmentally hazardous products license and fee, see § 42-1141 et seq.

§ 42-1306. Levy of tax; purposes; distribution

Notes of Decisions

3. Construction and application

Peabody Coal Co. v. State (App.1988) 158 Ariz.
190, 761 P.2d 1094, certiorari denied 109 S.Ct. 1967
[Main Volume] 490 U.S. 1051, 104 L.Ed.2d 435.

§ 42-1310.01. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales or gross income derived from the business. The tax imposed on the retail classification pursuant to this section does not apply to the gross proceeds of sales or gross income from:

1. Professional or personal service occupations or businesses which involve sales or transfers of tangible personal property only as inconsequential elements.

2. Services rendered in addition to selling tangible personal property at retail.

3. Sales of warranty or service contracts. The storage, use or consumption of tangible personal property provided under the conditions of such contracts is subject to tax under § 42-1408.01.

4. Sales of tangible personal property by any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the department and the United States internal revenue service as such a nonprofit organization for charitable purposes.

5. Sales to persons engaged in business classified under the restaurant classification of articles used by human beings for food, drink or condiment, whether simple, mixed or compounded.

6. Business activity by a person which is properly included in any other business classification by that person which is taxable under this article.

7. The sale of stocks and bonds.

8. Drugs and medical oxygen on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

9. Prosthetic appliances as defined in § 23-501 prescribed or recommended by a health professional licensed pursuant to title 32, chapter 7, 8, 11, 13, 14, 15, 16, 17 or 29.¹

10. Insulin, insulin syringes and glucose test strips.

11. Prescription eyeglasses or contact lenses.

12. Hearing aids as defined in § 36-1901.

13. Durable medical equipment which has a federal health care financing administration common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 8, 13, 14, 15, 17 or 29,² can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

14. Sales to nonresidents of this state for use outside this state if the vendor ships or delivers the tangible personal property out of this state.

15. Food, as provided in and subject to the conditions of article 1.1 of this chapter³ and § 42-1310.14.

16. Items purchased with United States department of agriculture food coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under § 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; and P.L. 99-661, § 4302).

17. Textbooks by any bookstore that are required by any state university or community college.

18. Food and drink to a person who is engaged in business which is classified under the restaurant classification and which provides such food and drink without monetary charge to its employees for their own consumption on the premises during the employees' hours of employment.

19. Articles of food, drink or condiment and accessory tangible personal property to a school district if such articles and accessory tangible personal property are to be prepared and served to persons for consumption on the premises of a public school within the district during school hours.

20. Lottery tickets or shares pursuant to title 5, chapter 5, article 1.⁴

21. The sale of precious metal bullion and monetized bullion to the ultimate consumer, but the sale of coins or other forms of money for manufacture into jewelry or works of art is subject to the tax. In this paragraph:

(a) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, which has been smelted or refined so that its value depends on its contents and not on its form.

(b) "Monetized bullion" means coins and other forms of money which are manufactured from gold, silver or other metals and which have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

22. Motor vehicle fuel and use fuel which are subject to a tax imposed under title 28, chapter 9, article 1 or 2,⁵ sales of use fuel to a holder of a valid single trip use fuel tax permit issued under § 28-1559, sales of aviation fuel which are subject to the tax imposed under § 28-1765.01 and sales of jet fuel which are subject to the tax imposed under chapter 9.2 of this title.⁶

23. Tangible personal property sold to a person engaged in the business of leasing or renting such property under the personal property rental classification if such property is to be leased or rented by such person.

24. Tangible personal property sold in interstate or foreign commerce if prohibited from being so taxed by the Constitution of the United States or the constitution of this state.

25. Tangible personal property sold to:

(a) A qualifying hospital as defined in § 42-1301.

(b) A qualifying health care organization as defined in § 42-1301 if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(c) A qualifying health care organization as defined in § 42-1301 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind, visually impaired and multi-handicapped children from the time of birth to age twenty-one.

(d) A qualifying community health center as defined in § 42-1301.

26. Magazines or other periodicals or other publications by this state to encourage tourist travel.

27. Tangible personal property sold to a person engaged in business classified under the prime contracting classification if the person is subject to tax under this article by reason of being engaged in such business, or to a subcontractor working under the control of a prime contractor that is subject to tax under this article, if the property so sold is to be incorporated or fabricated by the person into any real property, structure, project, development or improvement as part of the business. No deduction is available for the sale of tangible personal property which is not to be so incorporated or fabricated.

28. The sale of a motor vehicle to:

(a) A nonresident of this state if the purchaser's state of residence does not allow a corresponding use tax exemption to the tax imposed by this article and if the nonresident has secured a special thirty-day nonresident registration of the vehicle by applying according to § 28-302.

(b) An enrolled member of an Indian tribe who resides on the Indian reservation established for that tribe.

29. Tangible personal property purchased or leased in this state by a nonprofit charitable organization that has qualified under § 501(c)(3) of the United States internal revenue code⁷ and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.

30. Sales of tangible personal property by a nonprofit organization that is exempt from taxation under § 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or, from and after December 31, 1985, a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

31. Sales of commodities, as defined by title 7 United States Code § 2,⁸ that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

32. From and after July 1, 1984, sales of tangible personal property by a nonprofit organization that is exempt from taxation under § 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinary profession who is licensed by law to administer medical oxygen.

34. Sales of new semitrailers, as defined in § 28-101, manufactured in Arizona, or new parts manufactured in Arizona for semitrailers sold by the manufacturer to a person who holds an interstate commerce commission license for use in interstate commerce.

35. Sales of seeds, seedlings, roots, bulbs, cuttings and other propagative material to persons who use those items to commercially produce agricultural, horticultural, viticultural or floricultural crops in this state.

36. Machinery, equipment, technology or related supplies that are only useful to assist a person who is physically disabled as defined in § 46-191, has a developmental disability as defined in § 36-551 or has a head injury as defined in § 41-3201, to be more independent and functional.

37. Sales of tangible personal property that is shipped or delivered directly to a destination outside the United States for use in that foreign country.

38. Sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

39. Paper machine clothing such as forming fabrics and dryer felts, sold to a paper manufacturer and directly used or consumed in paper manufacturing.

40. Coal, petroleum coke, natural gas, virgin fuel oil and electricity sold to an environmental technology manufacturer, producer or processor as defined in § 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for fifteen full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Mining machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property, sold to persons engaged in business classified under the telecommunications classification, consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media which are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government for use by such government outside of this state.

(c) Persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state. This subdivision also applies to corporations that are not incorporated in this state, regardless of maintaining a place of business in this state, if the principal corporate office is located outside this state and the property will not be used in this state other than in removing the property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Railroad rolling stock, rails, ties and signal control equipment used directly to transport persons or property in intrastate or interstate transportation for hire.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles which are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and which are sold to bus companies holding a federal certificate of convenience and necessity or operated by a city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under § 45-604.

13. New machinery and equipment consisting of tractors, tractor-drawn implements, self-powered implements and drip irrigation lines not already exempt under paragraph 6 of this subsection used for commercial production of agricultural, horticultural, viticultural and floricultural crops in this state. In this paragraph, "new machinery and equipment" means machinery and equipment which has never been sold at retail except pursuant to leases or rentals which do not total two years or more.

14. Machinery or equipment used in research and development. In this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

C. The deductions provided by subsection B of this section do not include sales of:

1. Expendable materials.
2. Janitorial equipment and hand tools.
3. Office equipment, furniture and supplies.
4. Tangible personal property used in selling or distributing activities.
5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.
6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.
7. Motors and pumps used in drip irrigation systems.

D. In computing the tax base, gross proceeds of sales or gross income from retail sales of automobiles does not include any amount attributable to federal excise taxes imposed by 26 United States Code § 4001.⁹

E. In addition to the deductions from the tax base prescribed by subsection A of this section, there shall be deducted from the tax base the gross proceeds of sales or gross income derived from sales of machinery, equipment, materials and other tangible personal property used directly and predominantly to construct a qualified environmental technology manufacturing, producing or processing facility as described in § 41-1514.02. This subsection applies for ten full consecutive calendar or fiscal years after the start of initial construction.

F. In computing the tax base, gross proceeds of sales or gross income from retail sales of heavy trucks and trailers does not include any amount attributable to federal excise taxes imposed by 26 United States Code § 4051.¹⁰

G. In computing the tax base, gross proceeds of sales or gross income from the sale of use fuel, as defined in § 28-1551, does not include any amount attributable to federal excise taxes imposed by 26 United States Code § 4091.¹¹

H. If a person is engaged in an occupation or business to which subsection A of this section applies, the person's books shall be kept so as to show separately the gross proceeds of sales of tangible personal property and the gross income from sales of services, and if not so kept the tax shall be imposed on the total of the person's gross proceeds of sales of tangible personal property and gross income from services.

I. If a person is engaged in the business of selling tangible personal property at both wholesale and retail, the tax under this section applies only to the gross proceeds of the sales made other than at wholesale if the person's books are kept so as to show separately the gross proceeds of sales of each class, and if the books are not so kept, the tax under this section applies to the gross proceeds of every sale so made.

J. A person who engages in manufacturing, baling, crating, boxing, barreling, canning, bottling, sacking, preserving, processing or otherwise preparing for sale or commercial use any livestock, agricultural or horticultural product or any other product, article, substance or commodity and who sells the product of such business at retail in this state is deemed, as to such sales, to be engaged in business classified under the retail classification. This subsection does not apply to businesses classified under the:

1. Transporting classification.
2. Utility classification.
3. Telecommunications classification.
4. Pipeline classification.
5. Private car line classification.
6. Publication classification.
7. Job printing classification.
8. Prime contracting classification.
9. Owner builder sales classification.
10. Restaurant classification.
11. Feed classification.

K. The gross proceeds of sales or gross income derived from the following shall be deducted from the tax base for the retail classification:

1. Sales made directly to the United States government or its departments or agencies by a manufacturer, modifier, assembler or repairer.
2. Sales made directly to a manufacturer, modifier, assembler or repairer if such sales are of any ingredient or component part of products sold directly to the United States government or its departments or agencies by the manufacturer, modifier, assembler or repairer.

L. There shall be deducted from the tax base fifty per cent of the gross proceeds or gross income from any sale of tangible personal property made directly to the United States government or its departments or agencies, which is not deducted under subsection K of this section.

M. The department shall require every person claiming a deduction provided by subsection K or L of this section to file on forms prescribed by the department at such times as the department directs a sworn statement disclosing the name of the purchaser and the exact amount of sales on which the exclusion or deduction is claimed.

N. In computing the tax base, gross proceeds of sales or gross income does not include a manufacturer's cash rebate on the sales price of a motor vehicle if the buyer assigns the buyer's right in the rebate to the retailer.

O. Through December 31, 1996, there shall be deducted from the tax base the amount received from sales of solar energy devices, but the deduction shall not exceed five thousand dollars for each solar energy device. Before deducting any amount under this subsection, the retailer shall register with the department as a solar energy retailer. By registering, the retailer acknowledges that it will make its books and records relating to sales of solar energy devices available to the department for examination.

P. For the purposes of this section:

1. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

2. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

3. "Selling at retail" means a sale for any purpose other than for resale in the regular course of business in the form of tangible personal property, but transfer of possession, lease and rental as used in the definition of sale mean only such transactions as are found on investigation to be in lieu of sales as defined without the words lease or rental.

Q. For purposes of subsection K of this section:

1. "Assembler" means a person who unites or combines products, wares or articles of manufacture so as to produce a change in form or substance without changing or altering the component parts.

2. "Manufacturer" means a person who is principally engaged in the fabrication, production or manufacture of products, wares or articles for use from raw or prepared materials, imparting to those materials new forms, qualities, properties and combinations.

3. "Modifier" means a person who reworks, changes or adds to products, wares or articles of manufacture.

4. "Repairer" means a person who restores or renews products, wares or articles of manufacture.

Amended by Laws 1991, Ch. 128, § 2; Laws 1991, Ch. 158, § 12; Laws 1991, Ch. 176, § 7; Laws 1991, Ch. 200, § 1; Laws 1991, Ch. 224, § 4, eff. Oct. 1, 1991; Laws 1992, Ch. 18, § 8; Laws 1992, Ch. 63, § 1; Laws 1992, Ch. 135, § 1, eff. June 2, 1992; Laws 1992, Ch. 162, § 1; Laws 1992, Ch. 222, § 2; Laws 1992, Ch. 238, § 1, eff. Jan. 1, 1993; Laws 1993, Ch. 56, § 1, eff. Oct. 1, 1993; Laws 1993, Ch. 118, § 1; Laws 1993, Ch. 132, § 1; Laws 1993, Ch. 199, § 2; Laws 1993, Ch. 206, § 1; Laws 1993, Ch. 258, § 5.

¹ Sections 32-801 et seq., 32-901 et seq., 32-1201 et seq., 32-1401 et seq., 32-1501 et seq., 32-1601 et seq., 32-1701 et seq., 32-1800 et seq., and 32-2901 et seq.

² Sections 32-801 et seq., 32-901 et seq., 32-1401 et seq., 32-1501 et seq., 32-1601 et seq., 32-1800 et seq., and 32-2901 et seq.

³ Section 42-1381 et seq.

⁴ Section 5-501 et seq.

⁵ Sections 28-1501 et seq. and 28-1551 et seq.

⁶ Section 42-1571 et seq.

⁷ 26 U.S.C.A. § 501(c).

⁸ 7 U.S.C.A. § 2.

⁹ 26 U.S.C.A. § 4001.

¹⁰ 26 U.S.C.A. § 4051.

¹¹ 26 U.S.C.A. § 4091.

Retroactive Application

This section, as amended by Laws 1993, Ch. 258, § 14, applies retroactively to taxable years beginning January 1, 1988. See Historical and Statutory Notes, post.

This section, as amended by Laws 1992, Ch. 18, applies retroactively to taxable years beginning January 1, 1992. See Historical and Statutory Notes following § 42-101.

Historical and Statutory Notes

Laws 1991, Ch. 128, § 2, in par. 7 of subsec. B, deleted "or sold to" formerly concluding subd. (b), redesignated the first sentence of new subd. (c) as part of that subdivision, and inserted the second sentence of new subd. (c).

Laws 1991, Ch. 158, § 12, inserted par. 33 in subsec. A; and inserted the second sentence of par. 12 in subsec. B.

Laws 1991, Ch. 176, § 7, inserted a new subsec. L; and redesignated former subsecs. L and M as subsecs. M and N.

Laws 1991, Ch. 200, § 1, in subsec. A, inserted "and medical oxygen" in par. 8, substituted "sub-

stances" for "drugs" at the end of par. 8, deleted existing par. 13, and inserted par. 13.

Laws 1991, Ch. 224, § 4 inserted "and sales of jet fuel which are subject to the tax imposed under chapter 9.2 of this title" in par. 22 of subsec. A.

Laws 1991, Ch. 128, § 1, provides:

"Sec. 1. Intent

"The purpose of this act is to clarify statutory intent and ratify historical administrative interpretation. This act does not provide for any substantive change in the law."



STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
REVENUE DIVISION
OFFICE OF TAX ADMINISTRATION
P.O. BOX 8054
LITTLE ROCK • 72203-8054

1994 APR 29 AM 9:32

Phone: (501) 682-7200
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April 20, 1994

Ms. Mary Lou Benzel
Contracting Officer
Services Acquisition Center
General Services Administration
Federal Supply Service
Washington, D.C. 20406

RE: I.M.P.A.C. Card

Dear Ms. Benzel:

As requested in your letter of March 18, 1994, I have reviewed the information regarding the above referenced matter. The attachments to your letter indicate some of the concerns that the Revenue Division has with this card program. Those concerns apply to this new contract as well.

In addition, I believe it is important to note the problem this card may create for Arkansas Sales and Use Tax Permit holders. Currently, Arkansas Gross Receipts Regulation GR-47 provides that a purchase by an individual with his or her own funds is a taxable transaction regardless of whether the federal government reimburses the individual for that purchase. Because these taxable transactions include purchases made with non-I.M.P.A.C. government-sponsored credit cards, sales tax permit holders are faced with the difficult task of distinguishing between I.M.P.A.C. cards and non-I.M.P.A.C. cards. I raise this point because I believe that persons using I.M.P.A.C. cards may be well advised to carry additional documentation explaining the function of this card.

If I can be of further assistance to you in this matter, please direct your correspondence to my attention or call me at the above mentioned number.

Sincerely,

Ed Hicks, Administrator
Office of Excise Tax Administration